

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 16-CR-175 &
)	09-CR-222
vs.)	
)	Milwaukee, Wisconsin
JASON LUDKE,)	February 26, 2019
)	
Defendant.)	11:00 a.m.
)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE LYNN ADELMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 THE COURT: 16-CR-175 and 09-CR-222, U.S. versus
2 Ludke. Appearances, please.

3 MR. TAIBLESON: Good morning, Your Honor. Benjamin
4 Taibleson for the United States.

5 PROBATION AGENT: Dan Dragolovich for U.S. Probation.

6 MR. ULLER: Good morning, Your Honor. Jason Ludke
7 appears in person with Joshua Uller and Thomas Phillip.

8 MR. PHILLIPS: Good morning.

9 THE COURT: Okay. We're here for sentencing and a
10 revocation. The defendant previously pleaded guilty to Count 1
11 of the Indictment in the new case, but it appears the violations
12 set forth in the November 16, 2016 Updated Revocation Hearing
13 Report haven't been formally adjudicated. Mr. Uller, I assume
14 your client admits the three violations in that report?

15 MR. ULLER: Yes.

16 THE COURT: And Mr. Ludke, you've gone over this
17 hearing report dated November 16th with your client, I mean,
18 with your lawyer; you understand the violations; and if you
19 wanted to have a hearing, you could; and you could present
20 evidence and witnesses and question adverse witnesses, and you
21 could have your lawyers there. I'd appoint a lawyer, if
22 necessary.

23 And if I find you violated your release terms, I could
24 revoke your supervision, put you in prison up to two years and
25 re-impose supervised release up to three years less any period

1 of imprisonment. Understanding these rights, you admit the
2 alleged violations?

3 DEFENDANT: Yes.

4 THE COURT: And nobody's threatened you or promised
5 you anything to get you to admit them?

6 DEFENDANT: No.

7 THE COURT: All right. I find the defendant has
8 knowingly and voluntarily admitted the violations as alleged,
9 and I assume both sides agree that revocation is required. And
10 given that, I'll find that you violated your release terms, that
11 revocation is really the only realistic alternative, so I'll
12 revoke supervised release as of today.

13 And if nobody objects to the guideline calculations,
14 they are Grade A, Criminal History VI, 33 to 41 months range
15 with 24 months statutory maximum, and one to three years
16 supervised release less any period of imprisonment. And then
17 there's a \$50 assessment, which is an unsatisfied condition.

18 And then on the new case, Mr. Uller, you've gone over
19 the presentence with your client, I assume?

20 MR. ULLER: Yes, Judge.

21 THE COURT: And do you have any objections to
22 anything?

23 MR. ULLER: No.

24 THE COURT: And you waive full reading of supervision
25 conditions?

1 MR. ULLER: We do, Your Honor.

2 THE COURT: And the Government, any objections?

3 MR. TAIBLESON: No, Your Honor.

4 THE COURT: All right. Then, I'll adopt the facts in
5 the P.S.R.. The guidelines are Level 39, Criminal History VI,
6 240 months range, two years to life supervised release, 50,000
7 to 250,000 fine, \$100 assessment.

8 And if we're ready to proceed to sentence, Mr. Uller,
9 I'll hear from you and/or your client, and then I'll here from
10 Mr. Taibleson.

11 MR. ULLER: Thank you, Judge. Ordinarily, I wouldn't
12 submit 50 pages of materials to a Court in advance of
13 sentencing. I think doing so in this case is important. While
14 the Government doesn't really draw a distinction, the reality is
15 that not all terrorism cases are the same.

16 There are cases where defendants are actual terrorists
17 and inflict or try to inflict mass pain and suffering and fear.
18 And then there are cases like this where people like Mr. Ludke
19 who were, perhaps, sympathetic to an ideology, get caught up in
20 a moment of relatively, I will concede, waywardness. This case
21 is the later. And Mr. Ludke while certainly not a saint is not
22 a terrorist. He's not a threat to national security.

23 Looking at the conduct he engaged in in this case, he
24 never talked about violence. He never talked about Jihad or
25 killing people.

1 Many of ISIS's attacks have been domestic acts of
2 really random violence. We look at the post-nightclub shooting
3 in Orlando; San Bernardino shooting in California, attacks in
4 Manchester; Nice, France. These were crimes committed by people
5 with a will to hurt other people, and that's not who we're
6 dealing with.

7 Every indication is that Jason Ludke, like so many
8 other disillusioned people, was drawn to this idea of a utopian
9 caliphate. We're, obviously, dealing with someone who's
10 mentally ill.

11 The story of how Jason Ludke became who he is and as
12 mentally ill as he is is as sad as any I've seen. I understand
13 he's not someone that most people look at and feel that he's a
14 sympathetic figure. I find it impossible not to feel sympathy
15 for him. He was abused as a fetus and born into this unwelcome
16 and harmful environment. He didn't stand a chance in life. He
17 was physically and emotionally abused, neglected at
18 unprecedented levels.

19 So it's not really a surprise that within months of
20 becoming an adult, for purposes of Wisconsin's criminal justice
21 system, he was branded a criminal. It's not a surprise that
22 once he was in the criminal justice system, he was imprisoned.
23 And it's not a surprise that given his low functioning, he
24 couldn't get out of the system's grip.

25 In its sentencing memorandum, the Government claims

1 that both Ludke's offense and his record could hardly be worse.
2 That's just not true. I'm not going to justify his crime.
3 Mr. Ludke doesn't justify his offense. But the suggestion that
4 this is a serious offense possible is preposterous.

5 As to his criminal record, we've submitted that his
6 criminal record is overstated. And the reality is that the
7 Court, this Court, sees people with worse criminal records on an
8 almost daily basis.

9 It comes down to the fact that Mr. Ludke had some
10 significant limitations, and we can understand why. His crimes
11 are manifestations of those limitations. He doesn't know how to
12 cope, and he doesn't know how to express himself. He ends up
13 saying some crazy things that understandably scare people, but
14 the vast majority of those things are nothing more than hot air.

15 The Government says that Mr. Ludke hates non-Muslims.
16 Jason Ludke doesn't hate anybody. He's worked effectively with
17 this Jewish lawyer for over two-and-a-half years. He's worked
18 effectively with Mr. Phillips for almost ten years. He may have
19 some gripes with U.S. policies, and he has a complex as a
20 political prisoner. But I can understand why Mr. Ludke feels
21 that way. He's struggled his entire life to assimilate.

22 It's an identity that he's really imparted on himself.
23 He's a complicated person, Judge. And the goal of sentencing
24 isn't trying to make sense out of him. The goal is to determine
25 whether he's a danger of harming other people, and he has a

1 40-year track record of not doing so. It's just not who he is.
2 He doesn't just lack the capacity or wherewithal to hurt people.
3 He lacks the sophistication to do so in a manner that the
4 Government believes he's a threat.

5 He's likely in the future undoubtedly to say something
6 stupid. He's likely to say something that's going to scare
7 people, but the bottom line is that he's unlikely to engage in
8 violence in the future because he's never engaged in violence
9 thus far.

10 For -- Based on all the factors and the sentencing
11 memorandum that we've provided to the Court, the social history
12 we provided to the Court, the presentence report, factors under
13 3553, Your Honor, a sentence of five years in this case is
14 sufficient but not greater than necessary.

15 There are few, I guess, logistical things that we're
16 asking for. We're asking that he be designated to the
17 Mid-Atlantic Region within the Bureau of Prisons. We're asking
18 that the address on the judgment be a family member's address in
19 that region, and that's to facilitate a smoother release than he
20 dealt with during his last period of release. That address is
21 438 South Spencer Road in Campton, Kentucky, Zip Code 41301.
22 And we're also asking that the judgment include, as the
23 Indictment does, under his name his A.K.A., and that's Muhammad
24 Abdun Nassir.

25 Judge, we're asking in addition to the five-year

1 sentence that the Court imposes in -- in the new case, the
2 16-CR-175, we're asking for the supervised release conditions
3 that in addition to what's in the presentence report, the
4 special conditions that we've identified in the defense's
5 sentencing memorandum. Those also go to great length to
6 minimize the danger that Mr. Ludke's presence in the community
7 might hold.

8 Finally as to the revocation, we're asking that the
9 Court impose a two-year sentence in that case and run it
10 concurrent to the sentence it has imposed on 16-CR-175. The
11 Government has indicated to us it doesn't take a position on
12 whether the revocation be concurrent or consecutive, so we're
13 asking the Court run it concurrent given the overlapping conduct
14 between the two matters. Thank you, Your Honor.

15 THE COURT: So what's the name of that town in
16 Kentucky again?

17 MR. ULLER: Campton, C-a-m-p-t-o-n.

18 THE COURT: What's the Zip Code?

19 MR. ULLER: 40301.

20 THE COURT: I don't quite understand this address
21 business. That's -- that's -- You want that address on there,
22 is that the idea on the -- on the charges? I mean, isn't this
23 sort of what, kind of a technical matter?

24 MR. ULLER: Yeah, I think it's to -- When the Bureau
25 of Prisons -- If the address listed for him is a Green Bay

1 address, which it currently is, his release will be processed
2 through Green Bay. And given the concerns about, you know,
3 Green Bay's sex offender limitations, you know, Mr. Ludke spent
4 his community time in Green Bay living in the county jail.

5 THE COURT: Okay. What's the -- What's this A.K.A.?
6 It's Michael?

7 MR. ULLER: Muhammad Abdun, A-b-d-u-n, Nassir,
8 N-a-s-s-i-r. I believe it's on the Indictment.

9 THE COURT: Okay.

10 MR. ULLER: Mr. Ludke, Judge, over the course of after
11 his previous sentencing, he submitted several requests to the
12 Court to amend the judgment to include that name. I guess I'm
13 sort of hoping to preemptively have the judgment reflect that
14 largely to -- for both his sake, but also so the Court may not
15 have to deal with repeated pro se requests to -- to modify
16 things.

17 THE COURT: The second name is A-b-u-d, is that it?

18 MR. ULLER: A-b-d-u-n.

19 THE COURT: All right.

20 MR. ULLER: It's listed in the revised presentence
21 report on page 2.

22 THE COURT: All right. Does your client want to say
23 anything?

24 MR. ULLER: I believe so, Your Honor.

25 DEFENDANT: Judge Adelman, I take responsibility for

1 my actions. I know I messed up, man. And I did a lot of things
2 irrationally. I don't want to sit here, like, and recite you a
3 bunch of empty excuses that I imagine you've probably heard over
4 all the years. My attorney's kind of summarized a lot of my
5 issues going on, and I apologize to you, man. I apologize to
6 Mr. Taibleson and the Government for me being incohered (sic)
7 as propaganda, things on line. And it just got to, like,
8 disillusioning my whole vision about our problems in life, and
9 it skewed my whole world.

10 And this time has really let me sit down and kind of
11 evaluate how irrational I was acting out there, and I just fell
12 into a big downward spiral, man, and it just went out of
13 control. So with that, I apologize, man, and I accept my
14 punishment, you know.

15 THE COURT: Okay. Thank you.

16 MR. TAIBLESON: Thank you, Judge. As Your Honor
17 knows, it is rare for our office to recommend a statutory
18 maximum term of imprisonment. I never have until today. But a
19 statutory maximum term of imprisonment is necessary here. It's
20 necessary here because Jason Ludke has spent the last 20 years
21 proving that if he is not in prison, he's hurting or trying to
22 hurt or terrorizing other people.

23 I'm going to say a little bit about his offense of
24 conviction, his relevant conduct, his criminal history by way of
25 getting at the nature and circumstances of the offense, and the

1 history and characteristics of the defendant.

2 His offense of conviction is about as bad as it gets.
3 ISIS circle when he was trying to join was wholesale
4 slaughtering people. As the supreme court says, the material
5 support statute is on its face about preventing attacks. This
6 is not about an attack itself, of course, or otherwise we'll be
7 dealing with a very different situation with respect to the
8 statutory maximum and the Government's approach here.

9 It doesn't mean it's not real. It is not theater. It
10 was very real. Mr. Ludke was not just a teenager mouthing off
11 in an on-line discussion board. He went to great lengths. He's
12 a man in his mid-30's who went to great lengths to try to join
13 ISIS, cutting off the bracelet he was wearing because he was on
14 federal supervision, and traveling over the course of days to
15 Texas to try to cross to Mexico to try to fly to the Middle East
16 to join ISIS.

17 You know, a bank robber who might have a momentary
18 lapse in impulse control for 15 minutes might commit a bank
19 robbery. This was days of him very intentionally trying to get
20 to the border so he could fly to the Middle East.

21 The history of characteristics of the defendant. He's
22 a Category VI even without the terrorism enhancement. That is
23 an astonishing achievement for someone who has only spent a
24 matter of months out of custody in the last 20 years.

25 His criminal history includes, as Your Honor is aware,

1 sexually assaulting a little girl, threatening to kill Chief
2 Judge Griesbach, threatening to kill Judge Griesbach's family
3 and his staff. That is why he's a Registered Sex Offender
4 because he sexually assaulted that little girl when he was in
5 his twenties.

6 He argues that his property crimes are petty. They
7 include stealing a car. It's a fairly serious offense. There's
8 no doubt that Mr. Ludke had an awful childhood and is deserving
9 of our sympathy, and that is relevant to the extent that it
10 affects Your Honor's interest in retribution when choosing a
11 sentence, which I can candidly probably is not a primary
12 motivator in this courtroom in any event.

13 Okay, maybe he is deserving of our sympathy and so
14 deserves less retribution because his childhood rendered him
15 such that he cannot control himself from behaving this way. If
16 that is right and he cannot control himself, he cannot stop
17 himself from doing things like sexually assaulting children and
18 trying to join ISIS and threatening to kill judges and their
19 families, then he must be incapacitated. He must be in prison,
20 if all that is right.

21 Relevant conduct. If we were to draw up ex-ante, the
22 worst possible relevant conduct a defendant could commit after
23 being incarcerated for trying to join ISIS, we might imagine
24 that he tried to kill the F.B.I. agent who stops people from
25 joining ISIS, and that is what he did. He attempted through

1 sending multiple letters through other inmates, through meeting
2 with an undercover source, to have an F.B.I. agent murdered.
3 His response to being stopped from joining ISIS was not
4 contrition. It was a new attempted murder.

5 There may be cases where it makes sense to vary, for
6 policy reasons, from the terrorist enhancements. This is not
7 it. Multiple courts have said that the variety of material
8 support in which an individual attempts to join an organization
9 himself is, perhaps, the most aggravated version of this
10 offense, worse than just giving money.

11 The Government submits he is a relatively aggravated
12 offender. Again, he was not arrested in his basement where he
13 was posting mean language on line. He traveled across the
14 entire country after cutting off his supervision bracelet to do
15 this. The worst possible offense of conviction. The worst
16 possible criminal history. The worst possible relevant conduct.

17 It is a tragedy that a 240 month sentence is necessary
18 here. It is absolutely necessary here to stop him from hurting
19 people. The Government also submits that a life term of
20 supervised release is necessary thereafter. Thank you.

21 THE COURT: Okay. Thank you. Okay. I considered the
22 3553(a) factors, which include the nature and circumstances of
23 the offense, history and characteristics of the defendant, the
24 needs of the public and any victims, the sentencing guidelines
25 and policy statements and the avoidance of unwarranted

1 disparity.

2 I must then impose a sentence sufficient but not
3 greater than necessary to comply with purposes of sentencing,
4 which are just punishment, deterrence, protection of the public
5 and rehabilitation of the defendant.

6 As to the nature of the offense. In September 2016,
7 an F.B.I. undercover employee received a friend request from the
8 defendant who was using the name Abuz Sayyaf on social media,
9 and the undercover employee accepted the friend request and
10 thereafter had a private conversation with the defendant during
11 which defendant stated that he is from the United States and
12 wanted to make hijdra, which is migration away from darul kufr,
13 the land of the infidel.

14 On September 28, 2016, the defendant had another
15 private conversation with the undercover employee during which
16 he stated he was making plans to come there but was traveling
17 first to Mexico. And defendant said he had family in Mexico,
18 and he'll be able to purchase papers to travel.

19 The defendant and the undercover employee exchanged
20 e-mail addresses, and the defendant sent two pictures of himself
21 to the undercover employee's e-mail address. The defendant told
22 the undercover employee that he had training in jiu-jitsu and
23 computers, which defendant believed would be a benefit to ISIS
24 once he joined.

25 The defendant also stated that his co-defendant,

1 Yosvanni Padilla-Conde, had received firearms training while in
2 the Cuban military, and that defendant believed that
3 Padilla-Conde's firearms training would benefit ISIS. Both of
4 those statements appeared to have been false.

5 On September 28th of 2016, the defendant had a voice
6 chat with the undercover employee and said that he had a
7 brother-in-law in Mexico who can help them get from the United
8 States and into Mexico. And the undercover employee asked the
9 defendant to wait for further instructions before making any
10 attempt to leave the United States.

11 The defendant agreed to wait while the undercover
12 employee consulted with persons who can help defendant get into
13 Raqqa, Syria and then into Mosul, Iraq. The defendant uttered
14 the Islamic creed, pledged his allegiance to the leader of ISIS,
15 stated that he wants to live under Shariah law, that he rejects
16 tyranny and Kuffar, which is infidels, and that he believes in
17 Al-Wala'wa Al-Bara', love Muslims and hate infidels for Allah's
18 sake, and that he is ready to make Hijrah, migration, to join
19 ISIS as he knows they are on the path of Haq, which is truth.

20 On September 29, 2016, the defendant sent a video to
21 the U.C.E. in which he made similar statements. Later on
22 October 1, 2016, the defendant appeared in a video recorded and
23 sent to the U.C.E. by the co-defendant in which the co-defendant
24 swore allegiance to ISIS and expressed his intent to travel to
25 the Middle East to join ISIS. In the second video, defendant

1 supports and endorses this co-defendant's intent to join ISIS.

2 On October 3, 2016, the undercover employee got an
3 e-mail from the defendant saying, "Brother we making Hijrah so
4 just update me if ikhwan have brothers Mexico I can talk to for
5 help. Was salaam."

6 Two days later, the U.C.E. or undercover employee, I
7 should say, conducted an on going e-mail conversation with
8 defendant and defendant informed the undercover employee that he
9 was traveling in Texas and was on his way to El Paso. The
10 defendant stated that his brother-in-law, a Palestinian Muslim,
11 advised that he go to El Paso in order to cross into Mexico.

12 On October 5, 2016, law enforcement located defendant
13 and Padilla-Conde in San Angelo, Texas heading southwest -- I'm
14 sorry -- southeast towards the Mexican border. The defendant
15 was arrested on an outstanding warrant from Milwaukee for
16 violating his supervised release, which he was on for this
17 conviction for writing threatening letters to Judge Griesbach.
18 And he'd been on GPS monitoring, but he cut off his bracelet
19 before leaving Wisconsin on route to Mexico.

20 And then on June 5, 2017, the F.B.I. got information
21 via the U.S. Marshal Service that defendant, while detained on
22 the instant offense and on revocation of the supervised release,
23 was attempting to initiate a plot to kill the undercover
24 employee. Specifically, he was trying to get fellow inmates to
25 send letters out of the jail for him and to make phone calls to

1 outside parties for him with the aim of convincing outside
2 parties to utilize social media to arrange for this homicide.

3 On June 15, 2017, the F.B.I. took possession of two
4 letters that defendant gave to a fellow inmate at the Dodge
5 County Detention Facility. The defendant asked him to send the
6 letters to someone on the outside on defendant's behalf. But
7 instead of doing that, the inmate turned the letters over to law
8 enforcement. In one letter, defendant says he got busted
9 because a fake Muslim on line had set him and his co-defendant
10 up. The letter included a name for the targeted undercover
11 employee and said to the reader, "You know what to do." The
12 letters further instruct the reader to destroy his or her phone
13 status and sims card after receiving the letter. The letter --
14 That letter bears the signature Abu Syaf and is dated January
15 20, 2017.

16 The F.B.I. also obtained an audio recording of a
17 conversation between the defendant and a face-to-face visitor,
18 which occurred at the Dodge county facility on September 6,
19 2017. Although defendant and the visitor used coded language
20 during the conversation, investigators believe it is apparent
21 that they are discussing a plan to kill the undercover employee.

22 In a statement to the presentence writer, the
23 defendant cited, "I admit that in approximately September 2016,
24 I began communicating with individuals I thought were associated
25 with ISIS. I admit that I conspired with my roommate,

1 Padilla-Conde, to try to go overseas to join the ISIS group. I
2 am sorry. I apologize for my irrational behavior, and I accept
3 responsibility for my poor decisions and irrational decision
4 making."

5 According to the defense, the brother-in-law referred
6 to in the offense conduct, who was the individual that the
7 defendant planned to meet in Mexico, was the ex-boyfriend of the
8 defendant's sister, and that person had previously been deported
9 from the United States.

10 So turning to the character of the defendant. He's
11 38. He's got a lengthy record dating back to 1998 as set forth
12 in Paragraphs 39 to 47 of the P.S.R.. Earlier matters involved
13 thefts and burglaries. But more seriously in 2002, he was
14 convicted of second degree sexual assault of a child arising out
15 of an incident in which he gave a 14 year-old girl vodka so that
16 he could take advantage of her sexually.

17 In 2010, the defendant was convicted of mailing
18 threatening communications based on letters he sent from the
19 Brown County Jail threatening to kill Judge Griesbach and his
20 staff and bomb the courthouse. When authorities searched his
21 cell, they found several letters addressed to other federal
22 judges which contained similar threats.

23 In June 2009 prior to the letters being sent, the
24 defendant had been interviewed by an agent from the F.B.I.
25 regarding a bank robbery. The defendant told the agent he was

1 planning to renounce U.S. citizenship and join Hizballah group
2 in Iran. He further stated that prior to that term of
3 incarceration in the Brown County Jail, he had bought guns,
4 explosives and bullet proof vests in order to rob a bank, the
5 proceeds of which he would use to establish a Muslim community
6 to target the United States government, specifically to bomb
7 federal offices and army recruiting centers.

8 Investigators interviewed a number of other
9 individuals in regard to the defendant's statement about
10 purchasing explosives, firearms and bullet proof vests, and they
11 were unable to find any evidence that he'd actually done any of
12 these things.

13 Defendant's federal prison term for the threat case
14 began when his state prison term ended on November 22, 2013.
15 Prison records show that defendant recorded no disciplinary
16 violations while he was in federal prison. He was placed in a
17 halfway house in November of 2015, and he was found in
18 possession of a cell phone, which had nude photographs. And
19 shortly thereafter in January of 2016, he absconded from the
20 facility, and he was apprehended three days later, and he was
21 put in the Brown County Jail until he was released in March
22 of 2016.

23 And then in March of 2016, the court added a condition
24 requiring 120 days at a residential re-entry center due to
25 defendant's earlier termination from the halfway house in order

1 to assist with his re-entry. The defendant obtained employment
2 at Tufco Technologies in Green Bay.

3 On April 6, 2016, he failed to report back to the
4 facility after his work shift at Tufco ended. He reported the
5 next morning in violation of his schedule. And then on
6 April 30th, he reportedly became angry while working his shift,
7 and he walked off the job and then he failed to report back to
8 the facility and he absconded from supervision. And then he was
9 apprehended by a Fugitive Task Force on May 12th of 2016.

10 Then on June 2016, he appeared before the court for
11 revocation hearing, and he was continued on supervised release
12 with the condition that he reside up to 180 days in the Rock
13 County -- I'm sorry -- the Rockey Valley Community Program
14 Transitional Housing Facility.

15 On July 26, 2016, the condition was further modified
16 holding the remaining time in abeyance and imposing GPS
17 monitoring for up to 180 days. And then he was placed on GPS
18 monitoring the next day and he had some violations for being out
19 of range for short periods of time and he didn't submit activity
20 logs and he traveled to unauthorized addresses twice.

21 But then on October 2nd, he -- That's when he removed
22 his bracelet without permission and he absconded and then nobody
23 knew where he was, and he was arrested in Texas as I've
24 described on October 5th. And so these violations form the
25 basis for the revocation on the '09 case.

1 So the presentence report and the defendant's social
2 history report describe defendant's very difficult childhood.
3 He lived with his mother to the age of five when he was placed
4 in foster care due to his mother's substance abuse issues and
5 her neglect. The defense reports details the numerous -- The
6 defendant's report details the numerous instances in which the
7 authorities were contacted.

8 When the defendant was eight, he went to live with his
9 father. His father, apparently, didn't drink or use drugs, but
10 he was physically abusive. According to the defendant's sister
11 Jennifer, their father started kicking the defendant out of the
12 house when he was under the age of ten. The father would tell
13 the defendant, "I fucking hate you, I wish you were dead."
14 Sometimes when the father kicked the defendant out, he would go
15 stay with their mother, but the mother -- her alcohol abuse
16 would continue. And that the father, according to the sister
17 Jennifer again, the father frequently beat both her and Jason.

18 Defendant's mother died in 2017. And his father
19 indicated that the defendant isn't a terrorist, that he believes
20 his son's conversion to Islam was a result of being incarcerated
21 for so long. The father theorized that the son might hate the
22 United States because the amount of time he's been in prison.
23 He added that his son was in prison for most of his life. And
24 when he was in the community, he struggled to find a place to
25 live because he had the sex offender tag based on the previous

1 incident.

2 Despite this, he believed that his son did well in the
3 community for a while noting that he was able to maintain some
4 type of employment. Defendant's father further stated that
5 defendant had a difficult childhood, and his mother was an
6 alcoholic.

7 Defendant has no children. He's not involved in a
8 relationship. He denied being involved in a relationship prior
9 to his arrest for the instant offense. He hopes to live with
10 his maternal aunt, Linda Hall, in Kentucky when he's next
11 released from prison.

12 So there are definite correctional treatment needs
13 here including mental health discussed in Paragraphs 74 through
14 76 of the presentence. The defendant also has substance abuse
15 issues, mostly marijuana, as indicated in Paragraphs 80 through
16 86. The defendant did get a high school equivalency degree in
17 2005, and he completed some programming in state and federal
18 prison as indicated in Paragraph 88. But his work record in the
19 community is pretty limited, which isn't that surprising given
20 how much time he spent in custody.

21 The guidelines default to 20 years, which is what the
22 Government recommends. Let me first address the guidelines
23 recommendation, and then I'll turn to the 3553(a) factors and
24 the specific arguments of the parties.

25 In cases relating to federal crimes of terrorism,

1 guideline 3A1.4 requires that the offense level be increased by
2 12. And if the resulting level is less than 32, that it be
3 increased to 32. The guideline further provides that the
4 Criminal History Category be deemed six regardless of the
5 defendant's prior record. This means that a defendant in a
6 2339B case will face a guideline range of 360 months to life,
7 well in excess of the statutory maximum of 20 years regardless
8 of what he specifically did and regardless of whether he has no
9 prior record or a terrible record.

10 In this sense, guideline 3A1.4 resembles the Child
11 Pornography Guideline, which has been roundly criticized by the
12 courts in that it recommends sentences near or above the maximum
13 even in mine-run cases. This is contrary to the purposes of
14 sentencing in 3553(a), including the notion that sentences
15 should be individualized and proportionate, and that we should
16 distinguish between the worse offenders and those who are less
17 dangerous. See *United States v. Dorvee*, D-o-r-v-e-e, 616 F.3rd
18 174 at 186-87, (2nd Cir. 2010).

19 As the one court has noted in discussing this
20 guideline, material support cases can involve a wide range of
21 conduct. Yet guideline 3A1.4 results in a nearly identical
22 guideline range in each case regardless of the underlying
23 conduct. *U.S. v. Jumaev*, J-u-m-a-e-v, 2018 U.S. District Lexus
24 119, 916 at 28-29 (D. Colo. July 18, 2018). As the *Jumaev* court
25 further noted, this guideline was enacted pursuant to a

1 congressional directive. And absent the empirical evidence,
2 such guidelines do not exemplify the commission's exercise of
3 its characteristic institutional role, see *Kimbrough*,
4 *K-i-m-b-r-o-u-g-h*, v. *United States*, 552 U.S. 85 at 109, (2007),
5 and are generally entitled to less respect, see *United States v.*
6 *Reyes-Hernandez*, 624 F.3rd 405 at 418, (7th Cir. 2010), *United*
7 *States v. Tesillos*, T-e-s-i-l-l-o-s, 965 F.Supp.2d 1037 at
8 1040-41 (E.D. Wis. 2013).

9 That is a guideline that's based on the commission's
10 presumed expertise and its study of a particular issue is
11 treated with less respect than a guideline that was enacted
12 pursuant to a congressional directive and which is not supported
13 by any empirical evidence or any expertise applied by the
14 Sentencing Commission, which is presumably designated for that
15 role because of its expertise.

16 That said, I do find that a substantial prison
17 sentence is needed in this case to reflect the seriousness of
18 the offense, which is further aggravated by defendant's
19 post-arrest attempts to have somebody harm the F.B.I. agent.
20 The situation is further aggravated by the fact that defendant
21 committed the offense about six months after he was released
22 from federal prison and while he was on federal supervision.

23 Defendant also has a substantial prior record, and
24 he's been to prison several times, yet he continues to violate
25 the law. He's in Category VI based on points without

1 considering guideline 3A1.2(b), and he has a poor history on
2 community supervision, so there is a need for specific
3 deterrence and protection of the public, and there's also a need
4 to deter others.

5 There's no doubt that ISIS has committed atrocities,
6 as the Government notes in its sentencing memo, and there's also
7 no doubt that ISIS attempts to recruit foreign nationals. The
8 real issue here, it seems to me, is how seriously to take the
9 things the defendant says. Whether it's a commitment to join or
10 fight for ISIS or an attempt to get someone to harm a federal
11 agent or whether it's a threat to a federal judge and his staff,
12 the defendant is plainly willing to say terrible and threatening
13 things. But is he a danger to act on them?

14 As the Government notes, the defendant's conduct in
15 this case went beyond talk. He cut off his GPS monitoring, and
16 he traveled from Wisconsin to Texas. But where he was actually
17 going to go and what he was actually going to do after that is
18 not entirely clear. He hadn't purchased any ticket to the
19 Middle East. And as far as I can tell, he had no means or
20 specific plan to leave North America.

21 The defense memo argues with some force that he lacked
22 the capacity, sophistication and resources to do much of
23 anything helpful to ISIS. He certainly appears to fall into the
24 category of "aspirational not operational" discussed in the
25 defense memo. Put another way, Mr. Ludke was not ISIS's top

1 recruit. We know he didn't actually hurt or attempt to hurt
2 anyone. He didn't possess or attempt to possess any weapons.
3 He didn't acquire any weapons. He didn't provide any weapons or
4 money or information to others to facilitate an attack. It
5 appears that what he did say to the undercover employee about
6 how helpful he could be given his marshal training and his
7 co-defendant's firearms training was all hot air. There's no
8 evidence that any of that stuff that he said to the agent was
9 true.

10 It further appears his communications were not with
11 actual ISIS members but with F.B.I. agents who had him under
12 surveillance. Finally, it appears that much, if not most, of
13 what he said while detained was either delusional or boosting as
14 indicated on Page 9 of the defense memo. No one seems to
15 believe, for example, that he participated in battles against
16 the Mexican Army, which is one of the things he said.

17 When the F.B.I. looked into the 2009 claim that he
18 bought guns, explosives and bullet proof vests in order to rob a
19 bank to obtain proceeds to establish a Muslim community to
20 target the U.S. Government, the F.B.I. wasn't able to find any
21 evidence that he purchased any of those materials or he'd done
22 anything along those lines. Providing personnel, including
23 oneself, is no doubt serious as indicated in the cases cited on
24 Pages 4 and 5 of the Government's submission. However, I don't
25 think we can say, as the Government does on Page 4 of its brief,

1 that the nature and circumstances of the offense could hardly be
2 worse.

3 As the Government correctly notes in the next
4 paragraph, 2339B covers a range of conduct. And as the Seventh
5 Circuit has noted, sentencing judges should be aware of the
6 concept of marginal deterrence; that is, that the harsher
7 sentences should be reserved for the most culpable behavior;
8 otherwise, there's little room left above the defendant's
9 sentence for those who commit the offense in more harmful ways.
10 See *United States v. Newsom*, N-e-w-s-o-m, 402 F.3rd 780, 785-86
11 (7th Cir. 2005).

12 The parties list sentences imposed in other cases.
13 The *Jumaev* court also discussed the sentences imposed in other
14 cases. I see an array of numbers, perhaps, reflecting the
15 different circumstances of each case. It does appear that a
16 number of judges have declined to follow the guidelines in these
17 cases.

18 As I discussed earlier, following the guidelines in
19 cases like this would avoid disparity but only because just
20 about everybody gets maxed out. Avoidance of disparity is a
21 factor I must consider, but it's hard to glean a lot from these
22 cases other than that material support cases can vary a lot in
23 their facts and severity.

24 Looking at the defendant's history, his prior record
25 includes the sexual assault case, which was a very serious

1 matter, but he does not have a history of violence.

2 His earlier priors are relatively minor property
3 offenses committed when he was a teen. As defendant notes in
4 his memo, his more recent criminal conduct since the 2002-case
5 consists of saying things that are inappropriate as opposed to
6 doing things that are inappropriate or doing anything violent.

7 I'll also take into account the defendant's history
8 and characteristics. Aside from his criminal record, likely
9 fetal alcohol exposure, neglect and abuse as a child, which is
10 detailed in the Defense Social History Report, then brushes with
11 the law as a teenager. After he failed on probation, he was
12 sent to prison ending up in segregation where his mental health
13 deteriorated. It was at that point that he discovered Islam.

14 There's reason to wonder how much of his conduct is
15 due to a desire to follow a particular strain of Islam and how
16 much is due to mental instability. When he got out, sex
17 offender -- When he got out of jail, Sex Offender Registration
18 requirements made stable housing for the defendant nearly
19 impossible. He ended up living with the co-defendant. It also
20 appears that during this time he was using marijuana, and it was
21 at that point that he began communicating via social media with
22 this F.B.I. operative.

23 The defense memo indicates that he was vulnerable to
24 recruitment due to mental health issues, social isolation,
25 identity issues, and it appears that this defendant over the

1 years has identified with all kinds of religious or of different
2 religions, including Muslim, Jewish, Rastafarian. So Mr. Ludke
3 has been, apparently, committed to different religions at
4 different times in his life.

5 So given these factors, I do think that treatment and
6 monitoring in the community, can ameliorate his risk of
7 re-offending. I will as conditions of supervised release
8 include drug and mental health treatment and include a computer
9 monitoring program as recommended on Page 14 of the defense
10 memo. Ultimately, I have to balance several things. This is a
11 serious offense, no doubt about it, but defendant's conduct
12 falls toward the mitigated end of the spectrum.

13 The defendant has a lengthy record. But the recent
14 violations appear to stem almost completely from mental
15 instability and social isolation rather than any violent or
16 predatory disposition. And there is a need to promote respect
17 for the law and to deter others, but doing that without
18 succumbing to the temptation of using this defendant as a means
19 for expressing our horror and outrage at what ISIS has done.

20 So under all the circumstances, I find the total
21 sentence of 84 months sufficient but not greater than necessary
22 to satisfy the purposes of sentencing. This sentence is based
23 on 3553(a), would be the same regardless of the guidelines. The
24 violations in 09-CR-222 are based on the same conduct as in
25 16-CR-175, and I see no need to impose consecutive time, see

1 *U.S. v. Husko*, H-u-s-k-o, 275 F.3rd 600 at 603, (7th Cir. 2001).

2 I've considered as an aggravating circumstance
3 defendant's status on supervision. And the total sentence I've
4 imposed is sufficient to punish, protect the public and deter.
5 Therefore, the defendant is committed to the Bureau of Prisons
6 for 84 months in Case No. 16-CR-175, and 24 months in Case No.
7 09-CR-222 running concurrent.

8 I recommend that he be placed in the Mid-Atlantic
9 Region as requested. Based on his financial condition, I'm not
10 going to impose any fine. Upon release, he's on supervised
11 release for ten years in 16-CR-175. I want to impose a lengthy
12 term to ensure that he's monitored, treated and gets a
13 legitimate job.

14 While he's on release, he can't commit any crimes. He
15 can't illegally possess or use any controlled substances. And
16 from the P.S.R., he has to comply with Conditions 1 through 15
17 with any payments conditioned on ability to pay. The defendant
18 shall also allow the probation officer to install computer
19 monitoring software on any computer as defined in 18 U.S.C.
20 1030(e)(1) that he uses. To ensure compliance with the computer
21 monitoring condition, the defendant must allow probation to
22 conduct initial and periodic unannounced searches of any
23 computers subject to computer monitoring.

24 The defendant must warn any other people who use these
25 computers that the computers may be subject to searches pursuant

1 to this condition. The defendant shall pay all costs of
2 participation in the computer monitoring program conditioned on
3 his ability to pay.

4 Special assessment is \$100 due immediately in Room
5 362. The defendant has a right to appeal if he thinks there's
6 something unlawful. Counsel has a duty to advise him of his
7 right, and he knows the appeal has to be filed within 14 days of
8 the entry of judgment.

9 If the defendant wants to appeal, can't afford to, he
10 can ask for leave to appeal as a poor person. And as to the
11 other requests about the defendant's name and family address,
12 those -- I'll grant those. Anything further? Okay. Thank you.
13 Good luck to you, Mr. Ludke.

14 (Whereupon proceeding was concluded.)
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C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RPR, RMR, Official Court Reporter for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of my original machine shorthand notes taken in the aforementioned matter to the best of my skill and ability.

Signed and Certified March 4, 2019.

/s/Susan Armbruster

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